

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Application of New York Telephone )  
Company (d/b/a Bell Atlantic- )  
New York), Bell Atlantic )  
Communications, Inc., NYNEX Long )  
Distance Company, and Bell Atlantic )  
Global Networks, Inc., for )  
Authorization To Provide In-Region )  
InterLATA Services in New York )

CC Docket No. 99-295

COMMENTS OF DSL.net, Inc.

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October 19, 1999

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## SUMMARY

Bell Atlantic's application is premature. Substantial work remains to be done with respect to a host of DSL-specific issues, including performance metrics and DSL-specific backsliding measures. Bell Atlantic should have deferred filing its application pending completion of the NYPSC-sponsored DSL Collaborative.

The provisions in Bell Atlantic's tariff which restrict the use of Enhanced Extended Loops ("EELs") to the provision of switched local exchange service and associated switched access service are unreasonable and violate Section 51.309 of the Commission's rules. Until these onerous service restrictions are withdrawn, Bell Atlantic will be unable to satisfy item two of the competitive checklist.

Bell Atlantic's collocation offerings remain inadequate in several crucial respects, including responsiveness, affordability and flexibility. Bell Atlantic takes far too long to respond to CLEC requests, and its inordinately lengthy construction intervals further obstruct timely market entry. In New York, Bell Atlantic inhibits alternative forms of collocation, such as adjacent collocation, thereby denying CLECs the flexibility they often need to initiate service in new areas. The wide range of prices and underlying cost assumptions for collocation offerings from state to state within the RBOC's region further impedes CLECs' ability to introduce DSL-based advanced services in competition with Bell Atlantic.

Bell Atlantic's proposed backsliding measures, which entail potential bill credits in the aggregate amount of \$269 million per year are insufficient to deter anticompetitive conduct.

For all of these reasons, Bell Atlantic's application should be dismissed.

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## I. INTRODUCTION

DSL.net, Inc. (“DSL.net”), a competitive provider of communications services, submits these comments on behalf of itself and its subsidiaries. DSL.net or its subsidiaries are currently authorized to provide service in 44 states plus the District of Columbia; DSL.net is authorized by the FCC to provide interstate and international communications services. DSL.net currently provides customers high-speed data connections and Internet access. DSL.net is working diligently with all the Regional Bell Operating Companies (“RBOCs”) and is currently selling its services in Bell Atlantic states.

In previous decisions,<sup>1</sup> the Commission has provided the RBOCs with a detailed “roadmap” for their use in preparing Section 271 applications. Experience in previous Section 271 proceedings has shown that such a roadmap is necessary to avoid the tremendous waste of Commission and third party resources which occurs when RBOCs file incomplete and premature applications. Bell Atlantic has clearly devoted substantial time and energy (as have the other parties in the New York proceeding) to addressing the elements of the statutory fourteen-point checklist. However, under the statutory framework governing Section 271 applications, “close is not good enough.” In these brief comments, DSL.net identifies several significant respects<sup>2</sup> in which the Bell

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<sup>1</sup> See, e.g., *Implementation of Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) (“*Local Competition First Report and Order*”), *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan*, Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997) (“*Ameritech Michigan Section 271 Order*”).

<sup>2</sup> DSL.net wishes to emphasize that it has not undertaken an exhaustive analysis of the Bell Atlantic application. It is possible (indeed, likely) that other interested parties will identify other deficiencies in the application.

Atlantic application falls short of meeting the applicant's burden of proof. Because of these deficiencies, the Bell Atlantic application must be dismissed.

## II. DISCUSSION

### *A. Bell Atlantic Has Not Provided a Sufficient Showing Concerning Unbundled DSL Loops.*

As the Commission is well aware, both Bell Atlantic and its competitors are seeking to use DSL technology to deploy advanced telecommunications services to meet customer demand for high-speed Internet access and other data services, including virtual private data networks and telecommuting applications. Given this marketplace reality, the Commission has an opportunity to treat each RBOC Section 271 application as perhaps its last, but surely its best, opportunity to address DSL-specific provisioning issues. Once Bell Atlantic (or another RBOC) gains authority to provide long distance services, its incentive to work cooperatively with competitors to develop the necessary processes and to ensure that they operate efficiently and in a non-discriminatory manner will be diminished.

Bell Atlantic should have deferred filing its application until after the ongoing collaborative proceeding being conducted under the auspices of the New York Public Service Commission ("NYPSC") (Bell Atlantic Brief, p. 21) has been completed. The collaborative proceeding is expected to lead to the development and testing of DSL-specific processes, performance metrics and (if necessary) DSL-specific backsliding measures.

Bell Atlantic's efforts to excuse its premature filing on the grounds that DSL is "still new" (BA Brief, p. 22) cannot be countenanced. Bell Atlantic states that it has only provided approximately 520 ADSL-specific loops to six carriers, (BA Brief, p. 22) and its

supporting affidavit reveals that the vast majority of those loops, 449, were provisioned in August 1999, the month preceding the filing of BA's application. (Lacouture/Troy Declaration ¶ 82). At such low volumes, it is impossible to know whether the systems currently in place are scaleable to meet reasonably projected demand. The adequacy of Bell Atlantic's processes can only be demonstrated through rigorous testing. Testing of DSL-specific OSS was not included in the work plan of the consultants employed by the NYPSC. Indeed, only within the past six weeks did Bell Atlantic agree, during the NYPSC's DSL Collaborative meeting, to conduct joint testing with CLECs processing DSL-loop orders. In fact, this collaborative effort is in its infancy. There are important issues related to DSL provisioning that are just beginning to be addressed. For example, on the agenda for upcoming Collaborative meetings are topics including: 1) "No Access" and how Bell Atlantic and CLECs can devise a cooperative agreement to mitigate this problem that severely disrupts the CLECs' service deployment; 2) "Pair Swap" in the CLEC effort to have Bell Atlantic provide a cable pair that is more suited to DSL provisioning; and 3) performance measurements related to DSL service for reporting missed due dates, etc.

Bell Atlantic's application does not affirmatively demonstrate that it presently provides competitors with nondiscriminatory access to unbundled loops which can be used to deploy services based on DSL technology. For this reason alone, the application is premature and should be dismissed.

*B. Bell Atlantic Has Not Demonstrated the Availability of "EELs."*

Bell Atlantic imposes severe use restrictions on Enhanced Extended Loops ("EELs"). Its New York tariff limits the use of EELs to the provision of switched local exchange

service and associated switched access service.<sup>3</sup> On September 15, 1999, the Commission adopted its UNE Remand Decision. The Commission's press release indicates that loops and interoffice transport, the principal components of EELs, are unbundled network elements. Bell Atlantic cannot restrict the use of unbundled network elements without violating Section 51.309 of the Commission's rules, 47 C.F.R. § 51.309. Unless the service restrictions in Bell Atlantic's New York tariff which currently limit the use of EELs to the provision of switched local exchange service and associated switched exchange access service are withdrawn, Bell Atlantic will be unable to satisfy item two of the competitive checklist.

*C. There Are Unresolved Issues Concerning Bell Atlantic's Provision of Collocation.*

At pp. 14-16 of its application, Bell Atlantic describes its collocation policies and practices. Bell Atlantic asserts that it currently provides each of the collocation offerings required by the Commission's Collocation Order and that it does so in a timely manner. DSL.net submits that Bell Atlantic's glowing appraisal of its own performance is not supported by the record.

Crucial competitive issues remain with respect to DSL.net's collocation: responsiveness, affordability and flexibility. First, the long quotation and construction intervals obstruct timely market entry. Bell Atlantic's tariff specifies installation intervals for cageless collocation range from 76 days for secured locations and 105 days for unsecured locations (App. I, Tab 19, p. 9). Second, Bell Atlantic's tariff inhibits

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<sup>3</sup> In other words, EELs may not be used to provide packet data services or any service that resembles special access.

alternative forms of collocation, including adjacent collocation.<sup>4</sup> Finally, the price of collocation is a critical factor when determining the deployment of DSL.net's service. There are vast pricing differences for cageless collocation from state to state within RBOC regions, with vastly different underlying cost assumptions. Uniformity of basic underlying assumptions relating to the pricing of cageless collocation is essential in order for CLECs to deploy services with reasonable assurance that the RBOCs' prices remain at a reasonable level.

The burden is on Bell Atlantic to provide evidence, not merely assurances of future performance. On the present record, there is no basis for the Commission to conclude that Bell Atlantic provides collocation in compliance with the Commission's Collocation Order or that, in providing collocation, Bell Atlantic does not discriminate against CLECs.

*D. The Proposed Penalties Provide an Insufficient Deterrent to Backsliding.*

Bell Atlantic notes that its potential total exposure under its performance assurance plans will be no less than \$269 million annually, to be paid in the form of bill credits. The Commission should not focus on Bell Atlantic's maximum potential annual exposure to bill credits, but instead consider whether the bill credits Bell Atlantic would be obligated to pay will be sufficient to deter anticompetitive conduct. DSL.net believes that the level of penalties proposed by Bell Atlantic will not be adequate to serve as a deterrent.

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<sup>4</sup> Although Bell Atlantic does not offer adjacent collocation in New York, it was recently ordered by the Pennsylvania Public Utility Commission to tariff a total of twelve forms of collocation, including adjacent collocation, in compliance with the FCC's Advanced Service Order. *Opinion and Order*, Docket No. P-0991648, PA Public Utility Commission, September 30, 1999, at paras. 93-105.

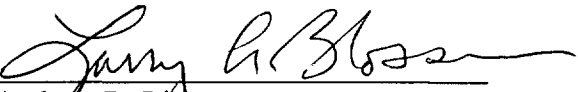


### III. CONCLUSION

For the reasons set forth herein, DSL.net believes that Bell Atlantic has failed to sustain its burden of demonstrating that it has satisfied each of the fourteen items of the competitive checklist, and respectfully urges the Commission to dismiss Bell Atlantic's application.

Respectfully submitted,  
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October 19, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing "Comments of DSL.net, Inc. in the Matter of Application by New York Telephone Company (d/ba Bell Atlantic-New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York" was served on this the 19th day of October, 1999, on each of the persons listed below:

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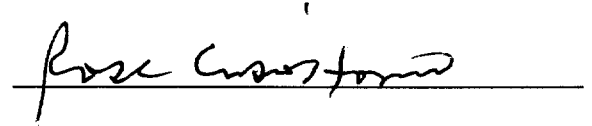
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A handwritten signature in cursive script, reading "Rose Crisostomo", is written over a horizontal line.